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Initial per T. Yackulic

November 12, 1999

CONFIDENTIAL SETTLEMENT  
DOCUMENT PREPARED AND  
SUBMITTED UNDER F.R.E. 408Via Fax

Attached Distribution List

Re: Union Pacific's Proposal To Settle Outstanding Technical Issues

Dear Ladies and Gentlemen:

This letter contains Union Pacific's proposal to settle outstanding technical issues which Union Pacific's representatives mentioned in our conference calls earlier this week.

**1. Chatcolet Bridge.**

After the final STB decision and CITU are issued and Union Pacific is permitted to begin salvage of the rail lines, Union Pacific will elect at its sole discretion one of the following two options:

**Option 1:** Union Pacific will remove the existing swing span bridge (for scrap) and erect a fixed span pedestrian bridge in the general location now occupied by the swing span bridge. The swing span bridge will not be preserved except by photo documentation. Union Pacific will have no responsibility for operation and maintenance of the fixed span bridge or approach causeways.

**Option 2:** Union Pacific will modify the existing swing span bridge for trail use. The design criteria for the modification will be as specified in Section 2.7.3.3.e. of the 8th Revision of the draft SOW.

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Under this option, for each year of the ten-year period after the trail is first opened, Union Pacific will reimburse the Tribe-State for actual costs they incur for maintenance and operation of the swing span bridge structure and mechanical works. The amount of such reimbursement is limited to \$65,000 per year. Maintenance of the approach causeways to the bridge are specifically excluded from the scope of activities for which Union Pacific will reimburse the Tribe-State. Labor, and any expenses to employ bridge attendants, operators, watchmen, etc., shall be limited to no more than \$30,000 of the \$65,000 total limit on reimbursement.

**2. Maintenance of Access Controls.**

Union Pacific believes the agreement in principle specifies that the Tribe and State are responsible for access controls after the trail is complete. Nonetheless, in order to move forward with the Consent Decree negotiations, Union Pacific will compromise and agree to share responsibility with the State and the Tribe as follows:

- a. Union Pacific will install the access controls as currently specified within the RAD Drawings and the RA Work Plan.
- b. The State and the Tribe will be responsible for maintenance of the access controls installed by Union Pacific under subsection (a) above. If any of those controls are damaged beyond normal wear and tear during the first three years of trail operation Union Pacific shall either repair or replace the damaged control feature.
- c. Union Pacific will retain the responsibility to locate additional access controls, beyond those specified within the RAD Drawings and the RA Work Plan, if such controls are determined to be necessary by the annual evaluation contemplated in the M&R Plan. The evaluation of need will consider those locations where additional access controls may need to be located to restrict access to off-trail contaminated areas at which a response action has not been implemented or to limit access onto the ROW for purposes of maintaining the integrity of the protective barriers. Observations will be taken during the monthly inspections to provide input for the annual evaluation.

**3. Horse Crossing of Active Rail Line in Plummer Junction.**

For reasons of public safety and risk minimization, it is Union Pacific's longstanding policy not to encourage or facilitate crossings over active rail lines. Union Pacific will not make an exception to that policy for Plummer Junction.

**4. Future Debris Accumulations at the Bridges.**

As part of the ROW trail conversion process, Union Pacific has agreed to remove all existing debris accumulations at bridges as part of flood damage repair work under the SOW. After completion of the ROW trail, the Tribe and the State are responsible for maintenance of all

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bridges including removal of any debris from around the bridges. Notwithstanding the maintenance obligations of the State and the Tribe after completion of the ROW trail, Union Pacific will agree to replace any bridges which are completely destroyed by future floods.

**5. Cash-Out of the Educational Program.**

In lieu of performing certain of the projects specified in the SOW under the Educational Element of Work, Union Pacific will agree to pay a lump sum of \$35,000 to the plaintiffs. This commitment will be included in Section XVI of the Consent Decree. This one-time payment will be in lieu of the following specific projects:

- a. Training manual for workers or other personnel who could routinely come into contact with any ROW contamination as provided by section 2.6.3.1 of the 8th Revision of the draft SOW.
- b. Development and printing of brochures for area residents and ROW users as provided in section 2.6.3.2 of the 8th Revision of the draft SOW.
- c. Public information presentations prior to the opening of the ROW trail as provided in section 2.6.3.5 of the 8th Revision of the draft SOW.

**6. ICP Permits.**

Union Pacific does not agree that Union Pacific's contractors working on the ROW after trail completion should be subject to a permitting program like that currently described in draft long-term oversight plans. This permit program is designed to inform contractors of hazards associated with working within the ROW and measures necessary to protect barriers. The objectives of the permit program are inherent in Union Pacific's obligations.

**7. Maintenance and Repair of Asphalt Trail through the Box.**

Union Pacific will agree to maintain and repair the asphalt trail through the Box in the same manner as the asphalt trail outside of the Box. In addition, the M&R Plan will specify an objective, standard for determining the need for future surface seals. The Governments will agree that the asphalt surface will be resurfaced, as opposed to replaced, on a schedule that is determined based on standard engineering practice.

**8. Performance Standards for Asphalt Trail.**

The current draft of the project specifications for the asphalt specifies a Class III plant mix that meets the IDT material and placement specifications used for the Kellogg Greenbelt and the North Idaho Centennial Trail. Requirements will be added to the subgrade preparation for the ballast to include scarification prior to compaction to ensure uniformity in the subgrade preparation.

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**9. Easement and Yard Remediation Issues.**

Language will be added to the SOW to address the resolution of encroachment issues as part of the Residential Use Areas Work Plan. The encroachments to be addressed are limited to those for which there is an established use as of the date the Consent Decree is lodged. The language will specify the following:

- Union Pacific will submit information to the State/Tribe that identifies encroachments that Union Pacific is currently aware of.
- The Tribe and State will evaluate whether the use represented by the encroachment will be allowed to continue.
- If the Tribe and State determine that the use can continue, then Union Pacific shall take the following actions:
  - If the use is a yard or garden area, and such use was established as of the date of lodging of the CD, Union Pacific will perform a response action within the use area as specified in the SOW and the Residential Use Area Work plan.
  - If the use is a structure or similar feature that does not represent an exposure risk, then no further action by Union Pacific will be required.
- If the Tribe and State determine that the use will not be allowed, then Union Pacific will take the necessary steps to have the encroachment cease. By mutual agreement, resolution of the encroachment may also be undertaken by the State and/or the Tribe. If the area of the encroachment represents an exposure risk, then a response action consistent with response actions that may have been specified for the area adjacent to the encroachment will be implemented. Within the residential areas this will typically represent extension of the protective barrier over the encroachment area.

**10. Privacy Screening.**

Union Pacific will agree to provide the State and Tribe with a lump sum of \$30,000 to be used for privacy screening. Payment of this sum will be addressed in Section XVI of the Consent Decree. Implementation of any privacy screening and expenditures of all or a portion of this sum on specific privacy screening will be the responsibility of the State and Tribe.

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#### **11. Agricultural Fencing.**

Union Pacific will provide for livestock fencing (typical 3 strand barbed wire) to established farmers and ranchers located adjacent to the ROW only in those locations meeting the following criteria: 1) the established use of the adjacent property is commercial livestock grazing; 2) the right of way is accessible to livestock; and 3) there are no existing barricades to livestock such as surface water, current fencing or other natural barricades. Union Pacific and the State and Tribe shall have no obligation to maintain such fences. Such agricultural fencing shall only be provided upon written request of a person for a location meeting the criteria set forth above.

#### **12. Noxious Weed Control.**

The agreement in principle indicates that Union Pacific is responsible to "perform weed control as it may relate to endpoints for maintaining the integrity of the barriers." As a practical matter, the long-term weed control obligation within the ROW will predominately be a responsibility of the State and Tribe. Rather than have overlap in the responsibilities, Union Pacific proposes the following:

- Union Pacific will agree to spray the entire ROW trail for noxious weeds one time immediately prior to the time it turns the completed ROW trail over to the State and Tribe. Identification of "noxious weeds" will be based on applicable state, tribal and county weed control regulations.
- Union Pacific will also perform weed control on the protective barriers for the first three years after their installation to address weeds that may be introduced by the barrier materials.
- The State and Tribe would then have responsibility throughout the ROW for weed control.

#### **13. Sign Maintenance.**

The State and the Tribe will maintain all signs along the completed ROW trail. Union Pacific will agree to replace signs which are stolen or damaged beyond repair. Such replacement costs shall be paid as part of the long-term oversight costs.

#### **14. Trail Amenities.**

It is our understanding that the State and Tribe are going to provide general specifications to complete the Table attached to the SOW.



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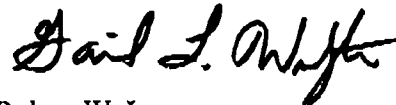
**15. Opportunity for Union Pacific to Buy Out Future M&R Responsibilities.**

Union Pacific should have the discretion to enter into negotiations with the Governments at any time for the purpose of determining a sum certain that would be paid by Union Pacific to buy out all future M&R responsibilities. Procedures will be included within Section XVI of the CD for return of the \$500,000 that is to be paid under Section XVI should it become apparent that it is unlikely that such negotiations will be successful.

This proposal is confidential and is prepared and submitted for purposes of attempting to settle claims which Union Pacific disputes. As such, it is subject to the protections contained in Rule 408, Federal Rules of Evidence.

Union Pacific looks forward to meeting with your representatives next week.

Sincerely,



Robert W. Lawrence

Gail L. Wurtzler

for

DAVIS, GRAHAM & STUBBS LLP

cc: Tom Greenland  
Bob Markworth  
Mike Cooper